HAJARA SINGH v. MUTHUKARUPPAN & ORS.

[F.C. (Barakbah L.P., Azmi C.J. (Malaya), and MacIntyre J.) October 29, 1966]

[Ipoh — Federal Court Civil Appeal No. X13 of 1965]

Contract — Agreement that person could occupy land for as long as he wished during his lifetime — Void for uncertainty — Contracts (Malay States) Ordinance, 1950, s. 30.

Practice and Procedure — Order 14 — Agreement void for uncertainty.

This was an appeal against the judgment of the High Court granting leave to the respondents to sign final judgment. The appellant alleged that there was an oral agreement between him and the owner of the land, allowing him to occupy the land for as long as he wished during his lifetime. It was argued for the respondents that the contract was void for uncertainty.

Held: under section 30 of the Contracts (Malay States) Ordinance the oral agreement in this case was void for uncertainty and therefore the learned trial judge was right in giving the respondents leave to sign final judgment for possession against the appellant.

Case referred to:—

(1) *M.P.R.L. Karuppan Chetty* v. *Suah Thian* (1916), 1 F.M.S.L.R. 300.

FEDERAL COURT.

C. Navaratnam for the appellant.

R. P. Dharmananda for the respondent.

Cur. Adv. Vult.

Barakbah L.P.: This is an appeal by the appellant against the judgment of a judge in Ipoh in granting leave to the respondents to sign final judgment.

The respondents who were the plaintiffs in the suit by a specially endorsed writ issued on 24th August, 1965, sought an order to eject the appellant who was the defendant from the land held under entry in mukim register No. 5539 Lot No. 5532 in the Mukim of Batang Padang registered in the name of the respondents as trustees. On the said portion of land for which he was paying rent at $4 a month, the appellant had erected premises known as No. 213 Old Chenderiang Road, Tapah, on the 2nd day of April, 1952, and has been and still is in occupation of the said premises. By a notice dated 7th January, 1965, the appellant was required to give up the land after a period of six months. The appellant failed to do so and the respondents filed a writ seeking an order for ejectment, *mesne profits* and damages. On 1st September, 1965, the appellant, through his solicitors, entered appearance and about a week later the respondents applied by summons in chambers for summary judgment under Order 14. The appellant then filed an affidavit sworn on 16th September, 1965, applying for unconditional leave to defend the action. He also filed his defence. The application under Order 14 came up for hearing in chambers on 4th October, 1965, and the learned judge decided in favour of the respondents by giving them leave to sign final judgment. Against this decision the appellant now appeals to this court.

The appellant also filed an application by way of motion for an order that he be at liberty to adduce in addition to the evidence before the court below the affidavit of the appellant sworn on 29th November, 1965. After some argument he withdrew the said application and as there was no objection by counsel for the respondents it was struck out.

The appellant's counsel in his submission referred to *Mallal's* Supreme Court Practice at page 139 which states:

> "It is sufficient for the defendant, in order to entitle him to defend the action, to raise a triable issue on its merits and leave to defend ought to be given unless there is clearly no defence in law and no possibility of a real defence on a question of fact."

He mentioned that the learned judge decided that the appellant's interest was unregistered as required by law which he admitted, but the judge had forgotten to consider whether there were other rights. In his affidavit as well as in his defence the appellant relied on an oral agreement made sometime in 1951 between him and one Jaganath, deceased, the owner of the said land of which the respondents are now registered proprietors as trustees under a deed of trust dated 10th October, 1964. According to the appellant it was agreed that he could occupy the said portion of land for as long as he wished during his lifetime. He alleged that the judge had failed to consider this oral agreement. In his reply counsel for the respondents referred to that part of the agreement which stated that it was agreed that the appellant could occupy the said portion of land for as long as he wished during his lifetime. According to section 30 of the Contracts (Malay States) Ordinance, 1950, "Agreements, the meaning of which is not certain, or capable of being made certain, are void." The expression "for as long as he wished during his lifetime", in my view, connotes uncertainty and the agreement is therefore void. This view finds support in the case of *M.P.R.L. Karuppan Chetty* v. *Suah Thian* [1] where it was held:

> "that there was no stipulation in the agreement from which it was possible to say for what period it was intended that the plaintiff should hold the premises, and that the document was therefore too vague and uncertain to constitute a valid agreement and must be considered as void under section 29 of the Contract Enactment, 1899."

In this case the expression "for a period of as long as he likes" was used. [Section 29 of the Contract Enactment, 1899, is similar to section 30 of the Contracts (Malay States) Ordinance, 1950.]. Under section 20(c) of the Specific Relief (Malay States) Ordinance, 1950, "a contract the terms of which the court cannot find with reasonable certainty" cannot be specifically

enforced. Even if the expression could be construed to mean for a period of more than a year it could not be for a longer period than 30 years according to section 47 of the Land Code and the lease would require registration under section 116 of the Land Code. In my view the action must fail for the contract upon which it was based was void. Even if there had been a valid contract the appellant had been given reasonable notice to vacate.

The appeal is therefore dismissed with costs.

Azmi C.J. (Malaya): I have had the advantage of reading the judgment of the Lord President. I agree that the appeal be dismissed with costs.

MacIntyre J.: I have had the advantage of reading the judgment of the Lord President in this appeal and I am in entire agreement with it.

Appeal dismissed.

Solicitors: *Gibb & Co.; Dharmananda & Co.*

ABU BAKAR v. MOHAMED ZAIN

[O.C.J. (Yong J.) November 2, 1966]

[Alor Star — Election Petition No. 5 of 1965]

Practice and Procedure — R.S.C 1957 — Application to election cases — Application to amend petition.

Election Petition — Application to amend petition — Discretion of court — R.S.C., 1957.

The petitioner at the hearing of the petition and after it had been heard for two days applied to amend it for the purpose of introducing incidents of threats in a particular village. Counsel for the respondent objected on the ground that such amendment would introduce a new cause of action against the respondent.

Held: (1) subject to sections 38(2) and 42(2) of the Election Offences Ordinance, 1954, and the Election Petition Rules, 1954, the Rules of the Supreme Court, 1957, are applicable in election cases in Malaya and therefore the court has a discretion to allow a party to amend its pleadings;

(2) in the circumstances of this case, as the application for leave to amend was made at a late stage of the proceedings and as the petitioner had not shown any justification for doing so, the application for amendment must be refused.

Cases referred to:—

(1) *Steward* v. *North Metropolitan Tramways Co.* (1886), 16 Q.B.D. 556.

(2) *Hipgrave* v. *Case* (1885) 28 Ch. D. 356.

(3) *Loutfi* v. *Czarnikow Ltd.* [1952] 2 All E.R. 823.

ELECTION PETITION.

Wan Mustapha bin Haji Ali for the petitioner.

Zahir bin Haji Ismail for the respondent.

Cur. Adv. Vult.

Yong J.: The petitioner (Abu Bakar bin Omar) asks this court for a declaration that the respondent (Mohamed Zain bin Ahmad) had not been duly elected or returned and that the election was void on the ground that he (the respondent) had on August 19, 1965 (election day) at 2.40 a.m. gone to Kampong Ason, Jitra, and there induced one Baharum bin Hassan to vote for the Alliance and threatened him that if he voted for the Pan Malayan Islamic Party he would be arrested or imprisoned.

The petitioner made a further general allegation that between darkness and dawn before the election day, the respondent corruptly influenced voters to refrain from voting in favour of the petitioner. This general allegation which gave no particulars in spite of requests from the respondent, was later in the proceedings withdrawn by petitioner's counsel.

After the petition had been heard for two days and evidence of many witnesses recorded, the petitioner's counsel applied for amendment of para 4 of his petition for the purpose of introducing incidents of threats in the village known as Kampong Meribut. Counsel for respondent strongly objected on the ground that such amendment would be introducing a new cause of action and a new charge against the respondent and that such amendments should not be allowed. In support of his contention he referred the court to two passages in *Doabia's* Indian Election Cases 1935 — 1950, Volume II, page 236, which reads as follows:—

"Particulars — Undue influence — Villages where committed not mentioned in the petition — their mention cannot be allowed subsequently as this would constitute addition of new instances.

There is abundant authority that a fresh instance of a corrupt practice cannot be regarded merely as an amendment of the particulars of such corrupt practice. Each single instance of corrupt practices stated to have been committed at certain villages which were not mentioned in the petition, constitutes fresh instances of corrupt practice . . . . It would thus appear that if at any time during the hearing of the petition, an application is made by the petitioner for addition of the names of new villages and of the persons alleged to have made use of the posters in these villages, that application will be liable to rejection, for the simple reason that it did not furnish further particulars of a corrupt practice already alleged in the petition but added to the substantial charge of corrupt practice contained in the petition."

And at page 323:—

"Particulars — New, cannot be supplied after expiry of the period of limitation for filing the petition.

When only vague allegations of corruption are made in the original petition, to allow specific particulars of those allegations to be furnished after the expiry of the prescribed period of limitation would in effect amount to the admission of a new petition which was time barred, and would involve the adoption of a procedure which the law does not contemplate."

On the other hand counsel for the petitioner contended that Indian authorities were not applicable since Indian election statutes are different from our Election Offences Ordinance, 1954 and that our Rules of the Supreme Court, 1957 should